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E-filed 7/27/07

5 Attorneys for Plaintiffs,
6 KARLONG CHAN, a minor, by and through his
7 Guardian Ad Litem, YUEN CHONG CHAN; and
YUEN CHONG CHAN

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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE**

12 KARLONG CHAN, a minor, by and) Case No. C07-01837 HRL
13 through his Guardian Ad Litem, YUEN)
14 CHONG CHAN; and YUEN CHONG)
15 CHAN, aka EVA CHAN,)
16 Plaintiffs,)
17 v.)
18 CUPERTINO UNION SCHOOL)
19 DISTRICT, a California School District;)
et al.,)
Defendants.)

**STIPULATION AND ORDER
VACATING THE MOTION TO
DISMISS IN ORDER TO ALLOW
PLAINTIFF TO CORRECT ERROR IN
THE COMPLAINT**

20 Plaintiffs, KARLONG CHAN (“KARLONG”), a minor, by and through his Guardian Ad
21 Litem, YUEN CHONG CHAN, and YUEN CHONG CHAN, aka EVA CHAN (“EVA”), and
22 Defendants, CUPERTINO UNION SCHOOL DISTRICT (“CUSD”), RUSS OTTEY
23 (“OTTEY”), SARAH CROWE, (“CROWE”), COUNTY OF SANTA CLARA (“COUNTY”),
24 EMQ CHILDREN AND FAMILY SERVICES (“EMQ”), RODERICK J. MACKENZIE, JR.
25 (“MACKENZIE”), CARLOS AGUILA (“AGUILA”) by and through their respective attorneys
26 of record, hereby stipulate to vacating Defendants’ Motions to Dismiss Complaint for Damages
27 and Motions to Strike presently set in this matter for August 21, 2007 to allow Plaintiffs to
28 amend their Complaint for Damages in order to substitute and replace “The Lanterman-Petris-

1 Short Act", which was inadvertently and mistakenly referenced therein in paragraphs 20, 37 and
2 38, for "Children's Civil Commitment and Mental Health Treatment Act of 1988", which is the
3 correct and proper Act at issue herein. Defendants shall then have thirty (30) days to file their
4 responsive pleading pursuant to the filing of the First Amended Complaint, a [proposed] copy of
5 which is attached hereto (Exhibit "A") and incorporated herein by reference. The First Amended
6 Complaint will be filed the following court day after the Order is filed.

7 A case management conference has been scheduled in the matter for September 11, 2007
8 with corresponding deadlines of August 8, 2007 to meet and confer under Fed. R Civ. Pro. 26
9 and August 29, 2007 to exchange initial disclosures.

10 Given that the case will not be at issue (due to the fact that there remains a dispute as to
11 the pleadings) by the date of the Case Management Conference or prior to the other
12 corresponding deadlines pursuant to Rule 26,

13 IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court,
14 that

15 the hearing on Defendants, CUSD, OTTEY, CROWE, COUNTY, EMQ, AGUILA and
16 MACKENZIE's Motions to Dismiss Complaint for Damages and Motions to Strike currently set
17 for August 21, 2007 at 10:00 a.m. be vacated and Plaintiffs be allowed to file their First
18 Amended Complaint the following court day after the Order is filed. Defendants shall then have
19 thirty (30) days to file their responsive pleading.

20 IT IS FURTHER STIPULATED AND AGREED that the Case Management Conference
21 currently set for September 11, 2007 in Courtroom 2 at 1:30 p.m. be continued to December 18,
22 2007, in Courtroom 2 at 1:30 p.m. with corresponding deadlines of November 27, 2007 to meet
23 and confer and December 11, 2007 to exchange initial disclosures and file a joint case
24 management conference statement, pursuant to Fed. R. Civ. Pro. Rule 26.

25 Dated: July 26, 2007

CAMPBELL, WARBURTON, FITZSIMMONS,
SMITH, MENDELL & PASTORE

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27 By: _____ /s/
J. Michael Fitzsimmons
Kelly M. Laughrin,
28 Attorneys for Plaintiffs,

1 KARLONG CHAN and EVA CHAN

2 Dated: July 26, 2007 NEEDHAM, DAVIS, KEPNER & YOUNG, LLP

3 By: _____/s/

4 Mark Davis
5 Attorney for Defendants, CUPERTINO UNION
6 SCHOOL DISTRICT, RUSS OTTEY, and
7 SARAH CROWE

8 Dated: July 26, 2007 ERICKSEN, ARBUTHNOT, KILDUFF, DAY &
9 10 LINDSTROM, Inc.

11 By: _____/s/

12 Sharon L. Hightower
13 Attorneys for Defendants,
14 COUNTY OF SANTA CLARA, EMQ CHILDREN AND
15 FAMILY SERVICES, RODERICK J. MACKENZIE, JR.,
16 and CARLOS AGUILA

17 **ORDER**

18 Good cause appearing therefor:

19 IT IS HEREBY ORDERED that the hearing on Defendants, CUSD, OTTEY, CROWE,
20 COUNTY, EMQ, AGUILA and MACKENZIE's Motions to Dismiss Complaint for Damages
21 and Motions to Strike currently set for August 21, 2007 at 10:00 a.m. be vacated and Plaintiffs
22 be allowed to file their First Amended Complaint the following court day after the Order is filed.
23 Defendants shall then have thirty (30) days to file their responsive pleading.

24 IT IS HEREBY FURTHER ORDERED that the Case Management Conference currently
25 set for September 11, 2007 in Courtroom 2 at 1:30 p.m. be continued to December 18, 2007, in
26 Courtroom 2 at 1:30 p.m. with corresponding deadlines of November 27, 2007 to meet and
27 confer (under Fed. R. Civ. Pro. Rule 26) and December 11, 2007 to exchange initial disclosures
28 and file a joint case management conference statement pursuant to Fed. R. Civ. Pro. Rule 26.

Dated: 7/27/07

By: 
HON. HOWARD R. LLOYD
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

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2 PURSUANT TO GENERAL ORDER 45,
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4 I, Kelly M. Laughrin, the ECF User transmitting and filing this Stipulation and
5 [Proposed] Order Vacating the Motion to Dismiss Complaint for Damages and Motion to Strike
6 In Order to Allow Plaintiff to Amend to Correct Error in the Complaint and continuing the Case
7 Management Conference to December 18, 2007 with corresponding deadlines of November 27,
8 2007 to meet and confer under Fed. R. Civ. Pro. 26 and December 11, 2007 to exchange initial
9 disclosures and file a joint case management conference statement, attest that I have obtained
10 the concurrence of Sharon L. Hightower and Mark Davis on this filing. I declare under penalty
11 of perjury.
12

Dated: July 26, 2007

CAMPBELL, WARBURTON, FITZSIMMONS,
SMITH, MENDELL & PASTORE

13 By: /s/
14 J. Michael Fitzsimmons
15 Kelly M. Laughrin,
16 Attorneys for Plaintiffs,
17 KARLONG CHAN and EVA CHAN
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